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Attorney Docket No.: 10254.204-US PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wu et al. Confirmation No: 7706

Serial No.: 10/500,477 Group Art Unit: 1652

Filed: June 29, 2004 Examiner: Raghu, Ganapathiram

For: Thermostable Enzyme Compositions

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed in response to the Office Action mailed September 25, 2006 that made a restriction requirement between one of the following groups:

Group I. Claims 14-21, drawn to a composition comprising at least two thermostable enzymes from the group consisting of endoglucanase, xylanase, phytase, protease, galactanase, mannanase, dextranase, and alpha-galactosidase, wherein each of the thermostable enzymes has a melting temperature, Tm, of at least 70°C, as determined by Differential Scanning Calorimetry (DSC) at a PH in the interval of 5.0 to 7.0 and said composition is an animal fed additive.

Group II. Claims 22-28, method for treatment of vegetable proteins comprising the step of adding the elected composition of group I.

Group III. Claim 22-28, method for improving the nutritional value of an animal feed comprising the step of adding the elected composition of group I.

The Office also required the Applicant to select a single species for prosecution on the merits.

Applicant respectfully traverses the restriction and the election of species requirements. The basis for traverse is that the Office Action applied an incorrect standard for determining whether a restriction requirement was proper.

The above-captioned application was entered into the national stage under 35 U.S.C. 371, i.e. filed via the PCT. For these types of applications, the PTO follows the rules set forth in 37 C.F.R. 1.401 - 1.499.

The standard for determining whether unity of invention exists during the national stage, i.e. whether a restriction requirement may be imposed, is set forth in 37 C.F.R. 1.475(a) which provides:

> An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.... Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Moreover, under 37 C.F.R. 1.475(b), an international or a national stage application in the national stage complies with the unity of invention requirement if the claims are drawn only to one of the following combinations of categories:

> (1) A product and a process specially adapted for the manufacture of said product; or
>
> (2) A product and a process of use of said product; or
>
> (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
>
> (4) A process and an apparatus or means specifically designed for carrying out the said process; or
>
> (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specially designed for carrying out the said process.

In the present case, the invention designated I is directed to an enzyme composition and the inventions designated II and III are directed to uses of said composition.

Under the standards set forth above, Applicant submits that the restriction requirement imposed in the Office Action is improper. Moreover, election of species requirements are not permitted in U.S. applications filed under 35 U.S.C. § 371.

Significantly, no objection to unity of invention was raised at any point of the PCT prosecution by either the International Searching Authority or the International Preliminary Examining Authority.

Applicant, therefore, respectfully submits that the restriction requirement is improper. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement.

In order to be fully responsive, Applicants hereby elect the invention of Group I, and the species of endoglucanase and xylanase, and SEQ ID. NO: 2 and 18 as the endoglucanase. As stated in Applicants' submission mailed January 18, 2005, SEQ ID NOs: 2 and 18 are identical except for the signal peptide. Claims 14-21 read on the elected species. Applicants hereby reserve the right to file continuing applications directed to the nonelected subject matter.

The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this response or application.

Respectfully submitted,

Date: October 23, 2006

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CERTIFICATE OF FACSIMILE TRANSMISSION

Commissioner for Patents
Washington, DC 20231

Sir:

I hereby certify that the attached correspondence comprising:

1. Response to Restriction Requirement

was sent to the United States Patent Office by telefax to the attention of Examiner Raghu, Ganapathiram, fax number (571273-8300.

Respectfully submitted,

Date: October 23, 2006

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